IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of Decision: July 23rd, 2007
CM(M) NO.746/2007

M/s.Federal Motors (P) Ltd. ..... PETITIONER
Through: Mr.A.S. Chandhiok, Sr. Advocate with Ms.Tatini Bau, Advocate

Versus

$ M/s.Atma Ram Properties (P) Ltd. ..... RESPONDENT
Through: Mr.Deepak Gupta with Mr.B.B. Gupta, Advocates.

CORAM :-
*** HON'BLE MR. JUSTICE ANIL KUMAR**

1. Whether reporters of Local papers may be allowed to see the judgment? YES
2. To be referred to the reporter or not ? NO
3. Whether the judgment should be reported in the Digest? NO

ANIL KUMAR, J. (Oral)
*****

1. The petitioner has impugned the order of Additional Rent Control Tribunal dated 26th March, 2007 dismissing the application for amendment filed by the petitioner/applicant after the sixth year of disposal of the eviction petition which was instituted in 1992.

2. Some relevant facts are that respondent filed an eviction petition in 1992 against the petitioner on the ground that the petitioner has sublet,

assigned or otherwise parted with the possession of a portion of the suit premises to M/s.Jay Vee Trading Company Pvt. Ltd. without obtaining the consent in writing from the petitioner and the said M/s.Jay Vee Trading Company Pvt. Ltd. is in exclusive possession and occupation of garage No.13 and a portion in the showroom of the suit premises. It had been contended by the respondent that showroom No.9 half portion is commercial whereas bathroom, kolki and garage are non-commercial. The eviction petition was instituted on 26th March, 1992 to which a written statement dated 16th December, 1992 was filed.

3. The petitioner in reply to the application of subletting or parting with the possession of the premises to M/s.Jay Vee Trading Company Pvt. Ltd. categorically contended that M/s.Jay Vee Trading Company Pvt. Ltd. is not in possession much less in exclusive possession or occupation of the premises.

4. Para 18(a)(ii) of the written statement dated 16th December, 1992 is as under:-

> "Para 18(a)(ii) of the petition is denied as wrong and incorrect. It is denied that the respondent had sublet, assigned and/or otherwise parted with the possession of the whole or any part of

> the suit premises or parted with the occupation of Garage No.13 and a portion of the show room as in the site plan filed alongwith the petition to M/s.Jay Vee Trading Company Pvt. Ltd. It is further denied that M/s.Jay Vee Trading Company Pvt. Ltd. is in possession, much less in exclusive possession of occupation of the said garage or the said portion as alleged or at all. The respondent/tenant is in full possession, occupation, control and command of the tenancy premises, which it has retained with it and M/s.Jay Vee Trading Company Pvt. Ltd. has not been sublet or assigned the tenancy premises or a part thereof, and nor has any portion of the tenancy premises been parted with by the respondent to the said M/s.Jay Vee Trading Company Pvt. Ltd. as alleged or at all".

5. On the plea of the parties, the respondent/landlord led his evidence and closed his evidence in 1996. Shri Jai Singh, Managing Director of the petitioner, appeared and deposed on 10th December, 1996 that M/s.Jay Vee Trading Company Pvt. Ltd. had never been in possession of any portion. The relevant deposition of the Managing Director of petitioner as on 10th December, 1996 is as under:-

> "Jay Vee Trading Company Pvt. Ltd., (Jay Vee Trading Company Pvt. Ltd.), had never been in possession of any portion of the portion in control and possession of the respondent company. It has nothing to do with the portion in possession of the respondent company. (Counsel for the respondent is trying to put question regarding the structural

> position of the premises of the suit). The same is not being permitted as the ground of eviction is subletting. It is clarify that if anything has been said by the witness of the petition in this regard, the same will not be looked into and merely because the respondent has not controverted the claim of the petitioner regarding structural changes, would not mean that the respondent has accepted the claim of the petitioner with regard to structural changes. I need not reproduce the claim of the A.W.1. The particular observation applies to the cross-examination of A.W.1."

6. On 10th December, 1996, the deposition of the petitioner's Managing Director was deferred and on 13th March, 1997 in the cross-examination he categorically, on oath, stated that he did not know anything about M/s.Jay Vee Trading Company Pvt. Ltd. and he had never been its Director or Managing Director and whether this is a registered company or has a certificate of incorporation and as to how many Directors are in the M/s.Jay Vee Trading Company Pvt. Ltd are not known to him. The deposition of the Managing Director of petitioner recorded on that date is as under:-

> "I have no knowledge about JV Trading Co. Pvt. Ltd. I do not know anything about it. Again said, I have some shares in this particular company. I had never been its director of M.D. I am not aware of the fact as to whether this JV Trading Co. Pvt. Ltd. is a regd. company under the Companies Act or has a certificate of incorporation issued by any competent authority. I am not aware as to how many directors are there in JV Trading Co.Pvt. Ltd., Smt.Geeta Gupta is wife. I have seen her writing and signing. I can identify her signatures if shown to me. I do not think that mark 'A' bears signatures of Geeta Gupta, at point 'A' duly encircled."

7. Thereafter petitioner sought amendment to his written statement which was allowed as the respondent/landlord did not contest the amendment sought by the petitioner. By amendment the petitioner incorporated that the erstwhile landlords Sardar Khushwant Singh and Sardar Gurbax Singh had filed two eviction petitions against the respondent before the Rent Control Tribunal, Delhi, and in one of the eviction petitions which was numbered as Eviction Petition No.920/1969, the earlier landlord from whom the respondents claimed title was filed regarding showroom No.9, kolki, bathroom in the passage in garage No.12 and 13 and the other eviction petition was filed by earlier landlord being petition No.921 of 1969 regarding garage Nos.18 and 19 and both the tenancies were considered as separate and accordingly the independent eviction petitions were filed. After the application for amendment was allowed, a written statement was filed. The amended written statement filed by the petitioner, however, it did not incorporate the amendments as had been allowed and as had been sought by the petitioner. Consequently, an application was filed by the petitioner for filing the amended written statement in terms of order passed on his application allowing the amendment. On 22nd July, 1999, therefore, another written statement dated 5th January, 1999 was filed incorporating the

amendments which were allowed.

8. After the amended written statement was filed, Managing Director of the respondent again appeared as a witness and stated that the holdings of both companies, i.e., Mussoorie Trading Company and M/s.Jay Vee Trading Company Pvt. Ltd. are exclusive with their respective Directors and the M/s.Jay Vee Trading Company Pvt. Ltd. remained in the premises which was in the tenancy of Mussoorie Trading Company. The deposition of Managing Director as recorded on 23rd February, 2002 after the amendment is as under:-

> "It is wrong to suggest that we have sublet, assigned or parted with possession in favour of J.V. Trading Pvt. Ltd.".

9. The petitioner's Managing Director was recalled for further cross-examination on 27th March, 1997 when he categorically denied that the possession of the property has been parted with in favour of M/s.Jay Vee Trading Company Pvt. Ltd. The deposition of the Managing Director of the petitioner is as under:-

> "It is wrong to suggest that we have sublet, assigned or parted with possession in favour of J.V. Trading Pvt. Ltd. company. It

is correct that Federal Motor was the tenant qua show room No.9 garage No.12 & 13, 18 & 19 since long. (Volt the tenancy was separate). It is correct that previous owner was M/s.Sobha Singh and Sons & thereafter property devolved to Mr.Khushwant Singh & Gurbux Singh. Thereafter, the property in suit has been purchased by the petitioner. It is wrong to suggest that in the year 1990 or their about half of the showroom No.9 was surrendered to the present petitioner (Volt In 1990. there was a family settlement in between myself & younger brother. In order to put the records straight, I approached Sh.CM Chadha to agree for creation of separate tenancy with respect to show room No.9 only. Mr.C.M. Chadha agreed in view of the explanation offered & separate tenancies were created. A partition wall was raised & the show room was divided into two portions. The other premises mentioned in above (super premises) remained with Federal Motors. This took place in 1990. my brother namely Mr.Virender Singh became the direct tenant of Mr.C.M. Chadha who is carrying on business in the showroom. It is wrong to suggest that as such in the year 1990 the demised premises was re-organised. As the rent receipts have never been issued since last five six years, there is no question of showing rent receipts, however the rent is being sent regularly by two separate cheques for two separate tenancies. It is wrong to suggest that we have never sent two different cheques qua payment of rent with respect to two separate tenancies (volt: the cheques were sent along with covering letter explaining the position. It is wrong to suggest that tenancy was always one & two different cheques even prior to 1990 were being sent for the purposes of audit. It is wrong to suggest that after 1990 their was only one tenancy i.e. it was treated as one. It is correct that factum of creation of two separate tenancies with the director Mr.C.M. Chadha regarding show room No.9 as deposed by me, was not pleaded in the court as it was not necessary at any print of time. For the purpose of Income Tax. Federal Motor & J. Vee Company are two distinct Company with separate registered offices & distinct business. However, the Directors & the share holders are the same and in my previous deposition I was not clear about this position & was confused. Both my statements as given just above and the statement to the effect “I have no knowledge

about J.Vee Trading Company Pvt. Ltd. are correct.

Q. On the last date you statement you had no knowledge about J.B.Trading whereas today you have depose otherwise. Please explain.

Answer:- It was under confusion as I was confused between J.V. Agencies & J.V. Trading as the initials are the same. I was having no shares in J.B. Agency (P) Ltd. on 13.3.97".

10. The eviction petition was heard and an order of eviction was passed in favour of respondent against the petitioner holding that the premises was sublet by the petitioner to M/s.Jay Vee Trading Company Pvt. Ltd. The appeal was filed in 2001 along with an application under Order XLI Rule 27 of the Code of Civil Procedure seeking production of the following documents:-

"1. Certified copy of eviction petition bearing No.E-57/84 filed by M/s.Atma Ram Properties Private Limited against M.sFederal Motors Private Limited.
2. Certified copies of the orders dated 20.9.1984 passed in the above noted case.
3. Letter dated 15.10.1990 (carbon copy duly signed) written by the respondent to M/s.J.V. Agencies Private Limited.
4. Site plan forming part of the aforesaid letter.
5. Original letter dated 17.2.1988 written by the respondent to the appellant.
6. Photocopy of confirmation of family settlement dated 31.10.1990'.

11. The application for placing the additional documents in eviction petition was declined including confirmation of family settlement dated 21.10.1990.

However, the letter dated 15th October, 1990, a site plan annexed thereto and letter dated 17th February, 1988 which was annexed with the application were allowed to be taken on record as the same were not disputed by the respondent on 1st November, 2006.

12. Thereafter the petitioner filed the application under Order VI Rule 17 of the Code of Civil Procedure dated 31st January, 2007 contending inter alia that the alleged sub-tenant company was got incorporated by the Managing Director of the respondent and Shri Virendra Singh in the year 1976-77 which is evident from the certificate of incorporation, memorandum of articles of association. It was also contended that priot to 30th October, 1990, the entire share holding of M/s.Jay Vee Trading Company Pvt. Ltd. was owned by Shri Virendra Singh and his wife Smt. Rashmi Gupta and Shri Jai Singh and his wife Smt.Gita Gupta which is evident from the annual return upto 30th September 1991 of M/s.Jay Vee Trading Company Pvt. Ltd. duly filed in the office of RoC, Delhi and Haryana. Along with the application, the petitioner also filed following documents including the copy of family settlement which was disallowed by order dated 1st November, 2006:-

SR. No.	PARTICULARS

1.	Attested true copy of certificate of incorporation, Memorandum and Articles of Association of M/s. Jay Vee Trading Co. Pvt. Ltd.
2.	Original office copies of Annual returns of M/s. Federal Motors Pvt. Ltd. upto September 1991 and upto September 1993 duly submitted in the office of ROC Delhi & Haryana, showing the details of its directors and shareholders; along with original receipt no. 4985 dated 25.2.1992 and original receipt no. 4722 dated 29.10.1993 regarding submission of aforesaid returns.
3.	Original office copies of Annual returns of M/s. Jay Vee Trading Co. Pvt. Ltd. upto September 1991 and upto September 1993 and upto September 2006 duly submitted in the office of ROC Delhi & Haryana, showing the details of its directors and shareholders; alongwith original receipt no. 4986 dated 25.2.1992 and receipt no. 4723 dated 29.10.1993 and challan no. AO 434501 dated 14.9.2006 regarding submission of aforesaid returns.
4.	Original letter dated 12.3.1992 issued by the Asstt. Registrar of Companies, Delhi & Haryana to M/s. Jay Vee Trading Co. Pvt. Ltd.
5.	Original letter dated 21.1.1998 by respondent to appellant and Original letter dated 10.2.1988 by appellant to respondent.
6.	True copy of indenture of confirmation of family settlement dated 31.10.1990.

13. In the application for amendment, it was contended by the petitioner that lapse and/or professional incompetence on the part of his counsel led to not lifting the corporate veil and not filing the appropriate and complete written statement and some of the documents filed along with the application for amendment. Had it been done it would have easily proved that not only

the directors and shareholders of both the companies are same but both the companies are wholly owned family companies of Sh.Jai Singh and his wife Smt.Gita Gupta who are the common directors and shareholders in both companies and the allegation of sub-letting by petitioner to M/s.Jay Vee Trading Company Pvt. Ltd. is absolutely baseless, false and an eyewash to somehow evict the petitioner from the tenanted premises which is the prime commercial premises in Connaught Place, New Delhi and is a source of livelihood for the petitioner. The relevant portion of averment made by the petitioner in his application for amendment is as under:-

> "The appellant submits that due to lapse and/or professional incompetence on the part of appellant's counsel before the trial court which led to improper and incomplete drafting of written statement no evidence has been led during trial of eviction petition to lift the corporate veil of the appellant company and alleged sub-tenant company which would have easily proved that not only the directors and shareholders of both the companies are same but both the companies are wholly owned family companies of Sh.Jai Singh and his wife Smt.Gita Gupta who are the common directors and shareholders in both companies and the allegation of sub-letting by appellant to M/s.Jay Vee Trading Company Pvt. Ltd. are absolutely baseless, false and an eyewash to somehow evict the appellant from the tenanted premises which is the prime commercial premises in Connaught Place, New Delhi and is a source of livelihood for the appellant. In fact even the evidence led by respondent where the witness of the respondent states that common telephone numbers and common seals are being used by the appellant company and the alleged sub0tenant company, also proves the aforesaid common characteristic of both the companies and also the fact that both the companies are in fact

> two sides of the same coin rather than two different coins because of commonality of individuals who are directors and shareholders of the both aforesaid companies."

14. The application by the petitioner for the amendment of written statement in appeal, six years after the appeal was filed, was contested by the respondent contending inter-alia that the application is belated and by filing the application the petitioner is making an attempt to get the same relief which has already been declined in its earlier application moved under Order 41 Rule 27 of CPC. The application for filing the additional documents had been declined and the petitioner was not allowed to produce the family settlement dated 31st October, 1990 and other documents except two documents which were admitted by the respondent. The respondent contended that the petitioner is making an attempt to bring a totally new defence and the petitioner is trying to retract from its earlier stand averred in its pleadings and the statements made by the Managing Director of the petitioner.

15. The respondent also relied on the observations made by the trial Court in respect of the conduct of Mr.Jai Singh, RW.1, Managing Director of petitioner as stipulated in judgment dated 19th March, 2001 passed by

Sh.Sunil Kumar Aggarwal, Additional Rent Controller which is as under:-

> "I would like to observe that RW 1, who appears to be a reasonably good educated person tried to be smart while deposing in the Court. Though he had been a director of M/s Jay Vee Trading Co (P) Ltd. Along with his wife yet pleaded blank when asked whether it is a company incorporated under the Companies Act. In fact he had denied any knowledge about it. He also pleaded doubt about signatures of his wife on the letter head of this company on Ex RW 1/P1. In the adjourned date he pleaded that he was confused as there are two companies M/s Jay Vee Trading Co (P) Ltd. and M/s Jay Vee Agencies. The witness was not a stranger to these two names who could have been confused easily. In fact even after the removal of alleged confusion he did not recollect whether he had been director of M/s Jay Vee Agencies of which he in fact was promoter with Sh.Virender Singh. RW 1 thus tried to sieve out facts before the Court instead of deposing with a clear hurt."

16. The respondent also raised the plea of delay and latches. He emphasised that the copies of annual returns of petitioner and M/s.J.V.Trading Company Co.Pvt Ltd for the period upto 1991 and thereafter are not found on the records of Registrar of Companies. An affidavit of Mr.Rakesh Kumar Sachdeva, Legal Assistant/General Attorney of the respondent dated 13th March, 2007 was also filed categorically stating that the returns of the petitioner company for the period 1991-1993 on which the petitioner relied in support of his contentions and pleas in the amendment applications are not on the record of Registrar of Companies and similarly the

returns of M/s.J.V.Trading Company Limited for the year 1991 upto 1993 are not on the records of the Registrar of Companies. The allegations of incompetence made by the petitioner against his counsel in order to justify not seeking these amendments earlier when the written statement was amended by the petitioner, were also denied by the respondent.

17. The learned Tribunal in its order dated 26th March, 2007 impugned before this Court has noted in detail the amendments sought by the petitioner and the statement of Mr.Jai Singh, Director of the petitioner company showing complete ignorance about the affairs of M/s J.V.Trading Company Limited and even the fact that a certificate of incorporation has been issued by a competent authority. The Tribunal has also referred to the observation of learned Additional Rent Controller regarding the conduct of Sh.Jai Singh, Managing Director of the petitioner during his testimony. The Tribunal has also noted the fact that the copies of annual returns which is also one of the basis for seeking amendment, are not found in the record of Registrar of Companies. The Tribunal has considered whether the plea raised by the petitioner in the application for amendment is a new plea or retraction of the pleas already raised by him or the explanation of the pleas already raised by the petitioner. Reliance has also been placed by the Tribunal on various

judgments of the High Court and the Apex Court.

18. The Tribunal was of the view that the application is neither bonafide nor shows due diligence on the part of the petitioner as to why the respondent company filed the application after more than six years of the filing of the appeal and after a period of 11 years after the last amendment was sought by the petitioner in 1996. The Tribunal has based its decision to dismiss the application also on the fact that the facts disclosed in the amendment application were within the knowledge of the petitioner but no cogent or reliable explanation has been given by the petitioner as to why the application was not moved for bringing the alleged facts now disclosed in the application for amendment. The Tribunal also relied on the fact that there was no explanation by the petitioner about the non-availability of the documents relied on by the petitioner in the record of Registrar of Companies and why the facts were also not disclosed in the earlier applications filed under Order 41 Rule 27.

19. I have heard learned counsel for the parties in detail and have perused the pleadings, statements and other relevant material produced along with this petition. It is no more res integra that piecemeal adjudication of disputes

is to be abjured and avoided. The petitioner had sought amendment of his written statement 1996 where the facts regarding filing of separate eviction petitions by erstwhile landlords Sh.Khushwant Singh and Sh.Gurbax Singh were incorporated. These facts as alleged by the petitioner now were also within their knowledge. The only excuse given by the petitioner for not disclosing these facts earlier, is of professional incompetence on the part of the petitioner's counsel before the trial Court. The Tribunal relying on the observation of the Controller regarding the conduct of the Director of the petitioner that he appears to be a reasonably good, educated person who tried to be smart while deposing in the Court and the fact that the Managing Director was not a stranger to the names of M/s J.V.Trading Company Pvt Ltd and M/s J.V.Agencies, as he had given an excuse that the two names had confused him, has disbelieved the explanation given for seeking amendment six years after filing of the appeal and 11 years after seeking earlier amendment on the ground that the facts could not be alleged before the Court earlier on account of professional incompetence of his lawyer. In exercise of jurisdiction under Article 227 of the Constitution of India, this Court is not to substitute the plausible inference drawn by the Tribunal while deciding an application under Order 6 Rule 17 of the Code of Civil Procedure. The decision of the Tribunal not believing the plea of the petitioner that the

alleged facts now sought to be incorporated could not be alleged on account of alleged professional incompetence of their counsel, does not suffer from a patent or flagrant error so as to entail interference by this Court, nor such an inference as has been propounded by the petitioner can be drawn from the facts and circumstances.

20. The petitioner had earlier sought an amendment to the written statement in 1996 and these facts were not sought to be incorporated. Thereafter application was filed for additional documents, however, the documents other than those which were accepted by the respondent, were disallowed including the alleged family settlement dated 31st October, 1990 by order dated 1st November, 2006. The attempt by the petitioner to seek amendment on the basis of family settlement, and to reintroduce the same family settlement along with the application for amendment does not support the plea of the petitioner that the amendment sought by him is bonafide. There is no rational or plausible explanation by the petitioner for not seeking amendment to the written statement earlier.

21. A Single Judge of this Court in 2001(59) DRJ 23, Claridges Hotel Pvt Ltd Vs. M.M.Bhagat and Company had held that piecemeal adjudication of

disputes is to be avoided and the principles articulated in Order 2 Rule 2 and Section 11 of the Code of Civil Procedure should broadly be applied even to application. The relevant observations in Claridges Hotel Pvt Ltd (Supra) are as under:-

> "Furthermore, it is firmly established that law requires that a piecemeal adjudication of disputes is to be abjured and avoided. This legal principle is articulated in Order II of the Code of Civil Procedure and exemplified in the principles of estoppel and res judicata. There seems to be no reason why these principles should not be broadly applied even to applications. In the present case the amendments which have been pleaded in the second application could as easily have been pleaded in the first one, which was withdrawn without any reservations or qualifications. In my opinion failure to plead all amendments at one instance would operate, except in the rarest of cases, as good and sufficient reason for its rejection. Rules of procedure, it has been so often stated, are handmaids of justice. Allowing several applications for amendments to be filed would have the direct consequence of delay in the culmination of a lis, and would thus be contrary to interests of justice. For all these reasons the second application for amendment of the Written Statement, being I.A. 9066/2000, is dismissed with costs of Rs.5000/-"

22. It is apparent that allowing applications for amendment and for production of additional documents would directly result in delay in adjudication of the disputes between the parties. An order of eviction on the ground of subletting has already been passed against the petitioner and in the appeal before the Tribunal, the attempt seems to delay the disposal as

much as possible. There was no other reason for not filing the application for production of additional documents and amendment simultaneously. First the application for additional document was filed after considerable time after the institution of appeal and on the dismissal of the application, within two months another application for amendment has been filed with the documents specially annual returns etc, which are not on the record of Registrar of Companies and the alleged family settlement, production of which was already denied by the Tribunal. The learned counsel for the respondent has also drawn my attention to "The disposal of records (in the office of the Registrar of Companies) Rules, 2003 specially Section 4 dealing with the destruction of documents." Perusal of the relevant rules fortifies the plea of the learned counsel for the respondent that the application for amendment relying on certain copies of the reports of the two companies have been filed after ascertaining that the same must have been destroyed and not available on the record of the Registrar of Companies. It appears that before the respondent got the inspection carried out of the record of the Registrar of Companies, no effort was made on behalf of the petitioner to communicate that these documents are not available with the record of the Registrar of Companies. In the circumstances the finding of the Tribunal not relying on these cannot be termed to be suffering from a mistake of law or

error of law relating to jurisdiction or an inference which is perverse or based on no material.

23. From the various judgments referred to by the Tribunal and the judgments, 2007 III AD (Delhi) 29, Vasudev Vs. Smt.Rupkumari @ Banarso Devi; 2001(59) DRJ 23, Claridges Hotel Pvt Ltd Vs.M.M.Bhagat and Company; JT 2003(8) SC 478, Bibi Zubaida Khatoon Vs.Nabi Hassan Saheb & Anr it can be culled that application for amendment is not to be allowed ordinarily after the trial has commenced unless the Court comes to the conclusion that despite due diligence the parties could not have raised the matter before commencement of the trial. The Court should be reluctant to allow the amendment, more so when the proposed amendment sought to introduce an entirely new dimension to the case of the parties and almost adding a cause of action distinct from the one pleaded and attempting to claim a relief which was earlier available to the parties seeking amendment but which was not taken up.

24. The party seeking amendment may introduce another plea based on some facts or may elucidate the facts pleaded or even may to some extent withdraw or explain withdrawal of an admission but such facts have to be

consistent with the plea already taken by the party praying for amendment. However, while explaining the plea already taken a party should not be allowed to take such plea which would be destructive of the original case pleaded by the party and must not cause prejudice to other side. It is also no more res integra that the provision relating to amendment of pleadings neither can be permitted to be used as a lever to frustrate the due process of law nor it can be permitted as an instrument for setting at knot the entire progress of the case which has already matured into passing of an order of eviction against the petitioner.

25. The respondent had been categorical in their plea that J.V.Trading Pvt Ltd is not in possession much less in exclusive possession or occupation of the said garage or the said demised premises as had been contended by the respondent. While taking this plea in the written statement it is apparent that the emphasis of the petitioner is that the said M/s J.V.Trading Private Limited Company is neither in exclusive possession nor in possession at all. Thus the plea of the petitioner is that M/s.J.V.Trading Private Limited Company is not possession of any portion of the property in dispute. Had the plea of the petitioner been that the M/s J V Trading Company Ltd is not in exclusive possession, the plea now sought to be raised could be construed to an

extent, the explanation of that plea that the said company is not in exclusive possession but permissive possession. However, the specific averment of the petitioner is that the said company is not at all in possession, which is now sought to be completely withdrawn and destroyed by the proposed plea that since M/s.J.V.Trading Company Pvt Ltd is also controlled by the same persons who are controlling the petitioner and so there is no parting with possession which has a latent plea that M/s J V Trading Company Pvt Ltd is also in possession of the demised premises, which plea is destructive of earlier plea and withdrawal of the original plea, which should not be permitted in the present facts and circumstances. The Tribunal has considered all these aspects in detail after hearing the parties and the judgments relied on by them and the finding of the Tribunal, in my opinion cannot be termed to be suffering from such jurisdictional error or patent or apparent error which will require interference by this Court under Article 227 of the Constitution of India.

26. The learned counsel for the petitioner has tried to rely on certain portions of the statement of Sh.Jai Singh where after first denying any knowledge about whether the certificate of incorporation has been issued; as to who are the Directors etc. of M/s J.V. Trading Private Limited, he had

deposed that he and his wife were the Directors. The said deposition of the Managing Director of the petitioner was contrary to the plea taken by them in the written statement. In the his cross examination recorded on 23rd February, 2002 it was also deposed by the Managing Director that the office of M/s.J.V.Trading Private Limited Company was also maintained and remains in the premises which was in the tenancy of Mussoorie Trading Company. Admittedly the premises which is in the tenancy of Mussoorie Trading Company is not the premises in dispute. Therefore, to say now that J.V.Trading Private Limited Company is also in possession, permissive possession on account of Directors of both the companies being same, is completely destructive of the plea taken by the petitioner and evidence led thereon that the said company was not in possession of any part or portion of the premises in dispute.

27. The proposed amendment also should not be allowed because the evidence is led on the basis of the plea, but the evidence which has already been led contrary to the pleas taken, should not be allowed to be justified by allowing the amendment for such deposition which was made contrary to the pleas.

28. The learned senior counsel for the petitioner, Mr.Chandhiok has contended that perusal of para 18 (a)(ii) of written statement dated 5th January, 1999 and the proposed amendment to para 18(a)(ii) will reflect that the original plea of the petitioner remains the same and only explanatory facts are sought to be incorporated. Though para 18(a)(ii) in the written statement dated 5th January, 1999 has been retained, however, the facts which are sought to be incorporated are completely in variance with the plea taken in the earlier amended written statement dated 5th January, 1999 and also appears to be destructive of those earlier pleas. In the circumstances I have no hesitation to hold that the amendment sought by the petitioner seeks to introduce an entirely new dimension to the case of the parties which is very distinct from their earlier stand that the said M/s J.V.Trading Private Limited Company Ltd is not at all in possession of the premises, as now the petitioner intends to contend that the possession of M/s.J.V.Trading Company is permissive and does not tantamount to parting with possession.

29. In case of Hira Lal Vs Kalyanmal and others, 1988(1) SCC 278 the Supreme Court has held as under:-

> ".....In the present case, once the defendants in their joint written statement clearly admitted that 7 properties out of 10 were joint family properties wherein the plaintiff had 1/3rd share

> and they had 2/3rd undivided share, it must be held that there was no contest between the parties regarding 7 items of suit properties in Schedule A. The trial court was, therefore, justified in framing the issues concerning only remaining three items for which there was dispute between the parties....."
>
> Even the grounds made out in the application were not justified. Consequently, there is no question of taking an inconsistent stand which would not have affected prejudicially the plaintiff as wrongly assumed by the High Court. Consequently, it must be held that when the amendment sought in the written statement was of such a nature as to displace the plaintiffs' case it could not be allowed....."

30. In the entirety of facts and circumstances and the contentions raised by the counsel for the parties I do not find any jurisdictional error in the order of the Tribunal nor it suffers from any patent or flagrant error or that the order suffers from such findings which are perverse or based on no material. In the facts and circumstances it also cannot be inferred that the order of the Tribunal dismissing the application of the petitioner in the present facts and circumstances can be construed to have caused manifest injustice to the petitioner. Rather allowing the application will result in manifest injustice to the respondent. Consequently, I do not find any merit in the petition and it is dismissed.

July 23rd, 2007 **ANIL KUMAR J.**

'sdp'